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AUBURN LAKE TRAILS PROPERTY OWNERS ASSOCIATION

**IN THE UNITED STATES BANKRUPTCY COURT**  
**IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA**  
**SACRAMENTO DIVISION**

In re:	)	Case No.: 12-29353-B-11
	)	Adv. No.: 13-02132-B
DANIEL MAJOR EDSTROM,	)	
	)	Docket Control No. ATL-2
Debtor and Debtor in Possession.	)	Chapter 11
	)	Assigned to: Hon. Thomas C. Holman,
	)	U. S. Bankruptcy Judge
DANIEL MAJOR EDSTROM,	)	
	)	
Plaintiff,	)	
vs.	)	<b>DEFENDANT ASSOCIATION'S</b>
	)	<b>MOTION TO DISMISS PLAINTIFF'S</b>
	)	<b>FIRST AMENDED COMPLAINT</b>
AUBURN LAKE TRAILS PROPERTY	)	
OWNERS ASSOCIATION, a California	)	
non-profit mutual benefit corporation,	)	
et al.,	)	Date: October 29, 2013
	)	Time: 9:32 a.m.
	)	Ctrm: 32, 6 <sup>th</sup> Floor
Defendants.	)	Dept: B
	)	
	)	

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendant AUBURN LAKE TRAILS PROPERTY OWNERS ASSOCIATION ("Association" or "ALT") respectfully submits the following Points and Authorities in support of its motion to dismiss Plaintiff Edstrom's First Amended Complaint. This is ALT's second motion to dismiss. At the previous motion to dismiss Plaintiff's Complaint hearing on July 23, 2013, the court required Plaintiff to file a "simple, concise, and direct" statement showing that the pleader is entitled to relief. The court also required Plaintiff to identify each statute and the specific subsection(s) of each statute which he believes were violated, and the specific facts which support the claim of a violation. Finally, Plaintiff was directed to avoid legal arguments in his amended complaint.

Plaintiff's First Amended Complaint should be dismissed, with prejudice, because there is no difference between the amended complaint and the original complaint. Plaintiff's First Amended Complaint is still rambling and contains legal arguments. Plaintiff fails to identify specific subsection(s) of each statute which he believes were violated and still fails to state specific facts which support the claim of a violation. Plaintiff is incapable of pleading new facts that would overcome the deficiencies of the pleading and thus, leave to amend should be denied.

POINTS AND AUTHORITIES

**1. Dismissal of Plaintiff's First Amended Complaint is appropriate because it is rambling and contains legal arguments and red herrings.**

In order to survive a motion to dismiss, the facts alleged must state a facially plausible claim for relief. *Shroyer v. New Cingular Wireless Services, Inc.* (9<sup>th</sup> Cir. 2010) 622 F3d 1035, 1041. A plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegations,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal* (2009) 129 S. Ct. 1937, 1954. Plaintiff's rambling conclusory arguments and red herrings fail to show that the amended complaint alleged facts sufficient to state a cause of action against ALT.

Plaintiff's First Amended Complaint is 27 pages long even though Plaintiff did not allege any new facts. The 27-page long amended complaint essentially rephrases same facts in many different ways with no explanation as to how any federal or state law was allegedly violated. The amended complaint

alleges legal conclusions and red herrings regarding “mail fraud,” “impersonation,” “identity theft,” “wrongful conversion of payments,” “alter-ego,” “conspiracy,” “whistleblower,” etc. There is no factual link to any specific federal or state law subsections supporting the alleged legal conclusions. Therefore, dismissal of Plaintiff’s First Amended Complaint is appropriate.

**2. Dismissal of Plaintiff’s First Amended Complaint is appropriate because it does not qualify as an adversary proceeding since no lien has been filed.**

Federal Bankruptcy Rule 7001 provides which actions qualify as adversary proceedings. Plaintiff’s First Amended Complaint is not one of the qualifying actions because no lien has been filed against Plaintiff-Debtor or his property. ALT is an unsecured creditor and the pre-petition amounts owed to ALT will most likely be discharged in the bankruptcy proceeding. Plaintiff is simply taking advantage of the bankruptcy system to avoid his assessment obligations as long as possible. Judicial resource is wasted and will continued to be wasted if Plaintiff continues to use the bankruptcy adversary proceeding to argue his so-called “mail fraud,” “impersonation,” “identity theft,” “wrongful conversion of payments,” “alter-ego,” “conspiracy,” and “whistleblower” theories. In conclusion, Plaintiff’s First Amended Complaint should not be adjudicated in this bankruptcy court and dismissal with prejudice is appropriate.

**3. The First Cause of Action Fails to State Any Claim Against ALT.**

Plaintiff’s first cause of action for violation of the automatic stay fails to state any cognizable claim against ALT. In relevant parts, the automatic stay under §362, 11 U.S.C. applies to the following post-petition acts:

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor . . . ;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title . . . .

The Chapter 11 was filed on May 15, 2012. On or about May 23, 2012, ALT received Plaintiff’s

1 notice of bankruptcy. On or about June 12, 2012, ALT informed Plaintiff that all proceedings against  
2 Plaintiff and his property would be suspended due to the automatic stay and any and all proceedings were  
3 suspended immediately thereafter. No lien has been filed against Plaintiff or against property of the  
4 debtor or the estate. No foreclosure actions have taken place.

5 Plaintiff alleges that restricted access to the automatic gates for approximately one month  
6 frustrated the automatic stay order. Plaintiff fails to cite any specific subsection(s) of 11 U.S.C. §362  
7 which supports Plaintiff's allegation. Instead of explaining how this alleged post-petition act constitutes  
8 violation of the automatic stay, Plaintiff's first cause of action rambles on regarding how Plaintiff is a  
9 "whistleblower" without explaining how this whistleblower theory ties into the alleged violation of the  
10 automatic stay. Consequently, Plaintiff's first cause of action is rambling, confusing, and conclusory.

11 Plaintiff did not allege any post-petition act in violation of the automatic stay. Plaintiff is simply  
12 alleging "restricted access" concept in order to draw an unwarranted deduction of fact or unreasonable  
13 inference of some kind of violation. However, "conclusory allegations of law and unwarranted  
14 inferences are not sufficient to defeat a motion to dismiss." *Interstate Natural Gas Co. v. Southern*  
15 *California Gas Co.* (9<sup>th</sup> Cir. 1953) 209 F.2d 380, 384. Therefore, Plaintiff's first cause of action lacks  
16 sufficient facts and a cognizable legal theory.

17 **4. The Second Cause of Action Fails to State Any Claim Against ALT.**

18 Plaintiff's second cause of action fails to state any cognizable claim against ALT because it is  
19 conclusory and lacks any cognizable legal theory. Plaintiff alleges that ALT is impersonating Allied  
20 Trustee Services, Inc. Plaintiff appears to expect that the court will read between the lines of rambling  
21 allegations and then draw an inference that ALT is somehow impersonating Allied Trustee Services, Inc.  
22 However, conclusory allegations of unwarranted inferences are not sufficient to defeat a motion to  
23 dismiss. Plaintiff must explain how the defendants are allegedly in violation of "numerous and multiple  
24 violations of the FDCPA." Again, Plaintiff fails to explain - - there is no application of any fact to the  
25 alleged FDCPA violations.

26 **5. The Third Cause of Action Fails to State Any Claim Against ALT.**

27 Plaintiff's third cause of action fails to state any cognizable claim against ALT because it is  
28 conclusory. Plaintiff fails to explain how the defendants are allegedly in violation of "numerous and  
multiple violations of the RFDCPA." There is no application of any fact to the alleged RFDCPA

1 violations.

2 **6. The Fourth Cause of Action Fails to State Any Claim Against ALT.**

3 Plaintiff's fourth cause of action fails to state any cognizable claim against ALT because it is  
4 conclusory and lacks sufficient facts supporting any cognizable legal theory. Plaintiff fails to explain  
5 how the defendants have allegedly engaged in unfair, deceptive, untrue, and/or misleading advertizing.  
6 Plaintiff fails to explain how his identity theft and impersonation theories have any relevance to this  
7 adversary proceeding. Plaintiff fails to identify specific subsection(s) of each statute which he believes  
8 were violated and still fails to state specific facts which support the claim of a violation.

9 Also, Plaintiff's fifth cause of action contains incomplete and run on sentences alleging various  
10 unwarranted legal theories with no factual support.

11 Further, Plaintiff rambles on and on about "unfair advantage over consumers," "rightful owners,"  
12 and "numerous liens against Auburn Lake Trails Property Owners Association members" and then  
13 concludes that the defendants are in violation of Business & Professions Code §17200. Plaintiff fails to  
14 allege any specific misrepresentation or misleading conduct constituting alleged violation under §17200.  
15 *Quelimane Co., Inc. v. Stewart Title Guarantee Co.*, (1998) 19 Cal. 4<sup>th</sup> 26. It is unclear what injury is  
16 allegedly suffered by Plaintiff or the so-called "rightful owners." It is impossible to respond to Plaintiff's  
17 rambling allegations.

17 **7. The Fifth Cause of Action Fails to State Any Claim Against ALT.**

18 Plaintiff's fifth cause of action fails to state any cognizable claim against ALT because it is  
19 conclusory. Plaintiff generally explains the theory of fiduciary duty, but fails to apply the theory to any  
20 specific fact relevant to this adversary proceeding. Plaintiff generalizes that "due to the longstanding  
21 mismanagement and misuse and misappropriation of member property and funds, the association is  
22 insolvent and/or incapable of remaining since they have acted outside the scope of their duties . . . ."  
23 Plaintiff rambles on about how the defendants should return misappropriated funds to the rightful owners  
24 and further rambles on about a duty to inquire whether Allied Trustee Services, Inc. had valid errors and  
25 omissions insurance. The allegations and arguments are confusing and lack coherence. There is no  
26 explanation or specific fact as to why or how there was a violation of fiduciary duty. It is impossible to  
27 determine how these leaping allegations lead to any fiduciary duty violation. It is unclear what specific  
28 fiduciary duty is allegedly violated. Plaintiff's fifth cause of action lacks sufficient facts and a

cognizable legal theory. Plaintiff's conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss. *Interstate Natural Gas Co. v. Southern California Gas Co.* (9<sup>th</sup> Cir. 1953) 209 F.2d 380, 384.

**8. The Sixth Cause of Action Fails to State Any Claim Against ALT.**

Plaintiff's sixth cause of action fails to state any cognizable claim against ALT. Plaintiff alleges that there is an agency relationship between ALT and G&P and that's it. Plaintiff seeks no relief under this cause of action. Plaintiff does not allege violation of any law. Plaintiff's sixth cause of action fails to state any cognizable legal theory.

**9. Objection and Disallowance of Claim is Improper.**

Plaintiff's objection and disallowance of claim is improper because Plaintiff's amended complaint does not qualify as an adversary proceeding. An objection is considered an adversary proceeding if it is joined with a demand for relief challenging the validity, priority, or extent of an interest in property. In this case, there is no validity, priority, or extent of an interest in property issue since ALT did not file any lien. Plaintiff simply lists 20 (a-t) different types of possible legal concepts taken out of a law textbook. Plaintiff's objection is rambling, conclusory, and a waste of judicial resource.

**CONCLUSION**

As evidenced by Plaintiff's rambling and conclusory First Amended Complaint, it is clear that Plaintiff is incapable of pleading new facts that would overcome the deficiencies of the pleading. Thus, dismissal of Plaintiff's First Amended Complaint with prejudice is appropriate. Otherwise, Plaintiff's frivolous pleading and motion practice will continue to waste the court's time and unfairly force the Association to incur unnecessary legal expenses.

Respectfully Submitted.

Dated: September 6, 2013

ANGIUS & TERRY, LLP

By: /s/ Sam Y. Chon  
SAM Y. CHON

Attorneys for Defendant Auburn Lake Trails  
Property Owners Association



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Auburn Lake Trails Property Owners Association

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO

IN RE DANIEL MAJOR EDSTROM

Debtor,

DANIEL MAJOR EDSTROM

Plaintiff,

v.

AUBURN LAKE TRAILS PROPERTY  
OWNERS ASSOCIATION, a California non-  
profit mutual benefit corporation; et al.

Defendants.

Case No.: 12-29353-B-11  
Adv. Proc. No.: 13-02132-B

Docket Control No. ATL-1

Chapter 11

**CERTIFICATE OF SERVICE**

Hearing date: October 29, 2013  
Time: 9:32 a.m.  
Courtroom: 32, 6<sup>th</sup> Floor  
Department: B

Hon. Thomas C. Holman

I, Denise M. Tacdol, declare that:

I am employed in the County of Placer, State of California, I am over the age of 18 and am not a party to the within action; my business address is 3001 Lava Ridge Court, Ste. 130, Roseville, CA 95661.

On July 16, 2013, I served the within:

Defendant Association's Motion to Dismiss Plaintiff's First Amended Complaint.

☒ (By E-Mail) through the Court's ECF Program;

☒ (By Mail – Federal) I placed such envelope with postage thereon fully prepaid in the

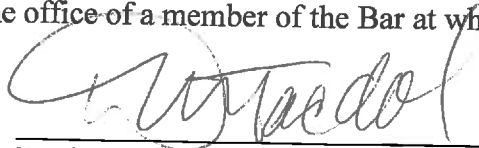
1 United States mail at Roseville, CA.

2 X (By Mail – State) I am readily familiar with the practice for the collection and processing  
3 of correspondence for mailing with the United States Postal Service; it is deposited with  
4 the United States Postal Service on the same date in the ordinary course of business at the  
5 business address show above; I am aware that on motion of the party served, service is  
6 presumed invalid if the postal cancellation date or postage meter dates is more than one  
7 day after the date of deposit for mailed contained in this declaration.

8 X Executed on September 6, 2013, at Roseville, California.

9 X (State) I declare under the penalty of perjury under the laws of the State of California that  
10 the foregoing is true and correct.

11 X (Federal) I declare that I am employed in the office of a member of the Bar at whose  
12 direction this service was made.

13   
14 Denise M. Tacdol

15 INTERESTED PARTIES:

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